

103^D CONGRESS
2^D SESSION

S. 2245

To provide additional methods of recovering costs to the Federal Government health care programs attributable to tobacco related illnesses and diseases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 7), 1994

Mr. LAUTENBERG (for himself and Mr. HARKIN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide additional methods of recovering costs to the Federal Government health care programs attributable to tobacco related illnesses and diseases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare and Medicaid
5 Third Party Liability Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) illnesses and diseases that result from the
2 use of tobacco products cost Federal Government
3 health care programs billions of dollars, including at
4 least \$16,000,000,000 in the medicare program and
5 \$3,000,000,000 in the medicaid program for inpa-
6 tient hospital services in fiscal year 1994;

7 (2) over the next 20 years, such illnesses and
8 diseases will cost the medicare trust funds at least
9 \$800,000,000,000;

10 (3) in April 1994, the trustees of the medicare
11 trust funds concluded that such funds may be insol-
12 vent in 7 years, with \$128,000,000,000 of expendi-
13 tures due to such illnesses and diseases;

14 (4) recent discoveries, including documents,
15 patents and patent applications, and testimony, have
16 shown that—

17 (A) the tobacco industry has known for
18 years that the nicotine in cigarettes is addictive,

19 (B) the industry has attempted both to
20 conceal this information from the public and
21 the Government and to manipulate the amount
22 of nicotine in cigarettes, and

23 (C) it is possible to manufacture cigarettes
24 which are far less dangerous to consumers;

1 (5) more than 36 percent of medicare recipients
2 are former smokers and 20 percent are current
3 smokers;

4 (6) approximately 43 percent of medicaid re-
5 cipients smoke, compared to 26 percent of the gen-
6 eral public;

7 (7) the medicare population is much more at
8 risk of contacting illnesses and diseases that result
9 from the use of tobacco products than younger
10 smokers, because such population has smoked
11 longer;

12 (8) legal scholars and courts are increasingly
13 agreeing that it is appropriate to use statistical evi-
14 dence to prove causation; and

15 (9) in view of the large number of Americans
16 killed, disabled, or otherwise injured each year as a
17 result of smoking cigarettes, the addictiveness of the
18 nicotine in cigarettes, and the absence of any signifi-
19 cant benefits to society from smoking, cigarettes are
20 an unreasonably dangerous product and cigarette
21 manufacturers are engaged in abnormally dangerous
22 activities.

23 (b) PURPOSE.—The purpose of this Act is to allow
24 the American taxpayers to recoup billions of dollars in

1 Federal Government health care funds spent on tobacco
2 related illnesses and diseases.

3 **SEC. 3. CLASS ACTION TO RECOVER COSTS TO FEDERAL**
4 **GOVERNMENT HEALTH CARE PROGRAMS OF**
5 **TOBACCO RELATED ILLNESSES AND DIS-**
6 **EASES.**

7 (a) IN GENERAL.—(1) With respect to payments
8 made under any applicable Federal Government health
9 care program to or on behalf of more than one recipient
10 with a disease, illness, condition, or complication caused,
11 in whole or in part, by the use of tobacco products, the
12 Attorney General of the United States may seek recovery
13 for such payments from third parties (or any successors
14 to such third parties) that manufacture tobacco products.
15 The Attorney General (after consultation with the appro-
16 priate Secretaries who administer such programs) may
17 bring an action in the name of the United States in United
18 States district court to recover such payments made to
19 or on behalf of all such recipients in one proceeding.

20 (2) Any action to enforce the rights of the Attorney
21 General under this section with respect to any payment
22 described in paragraph (1) shall be commenced within 5
23 years of such payment.

24 (3) For purposes of paragraph (1), the term “applica-
25 ble Federal Government health care program” includes—

1 (A) the medicare program under title XVIII of
2 the Social Security Act;

3 (B) the medicaid program under title XIX of
4 such Act;

5 (C) the veterans health care program under
6 title 38, United States Code; and

7 (D) any other similar Federal health care pro-
8 gram.

9 (b) NOTICE UNDER THE CLASS ACTION.—(1) In any
10 action brought under this section, no notice to recipients
11 described in subsection (a)(1) is required, and such recipi-
12 ents shall have no right to become a party to such action.
13 Such action is independent of any rights or causes of ac-
14 tion of such recipients.

15 (2) In any such action in which the number of recipi-
16 ents described in subsection (a)(1) is so large as to cause
17 it to be impracticable to join or identify each claim, the
18 Attorney General shall not be required to so identify the
19 individual recipients for which payment has been made,
20 but rather can proceed to seek recovery based upon pay-
21 ments made to or on behalf of an entire class of recipients.

22 (c) RULES OF EVIDENCE.—In any action brought
23 under this section, the Federal Rules of Evidence shall be
24 construed, regarding the introduction and probative value
25 of evidence on the issues of causation and damages, in

1 order to effectuate the purposes of this Act to the greatest
2 extent possible. The issues of causation and damages in
3 any such action may be proven by use of statistical analy-
4 sis or epidemiological evidence, or both.

5 (d) SHARE OF LIABILITY.—In any action brought
6 under this section in which a third party is liable due to
7 its manufacture, sale, or distribution of a tobacco product,
8 the Attorney General shall be allowed to proceed under
9 a market share theory, if the products involved are sub-
10 stantially interchangeable and substantially similar factual
11 or legal issues would be involved in seeking recovery
12 against each liable third party individually. In the alter-
13 native, the Attorney General shall be allowed to proceed
14 under a theory of concerted action or enterprise liability,
15 or both, if warranted by the facts presented to the court.

16 (e) DISTRIBUTION OF RECOVERY.—Amounts recov-
17 ered under any action brought under this section shall be
18 paid to the United States and disposed of as follows:

19 (1) In the case of amounts recovered arising
20 out of a claim under title XIX of the Social Security
21 Act, there shall be paid to each State agency an
22 amount bearing the same proportion to the total
23 amount recovered as the State's share of the amount
24 paid by the State agency for such claim bears to the
25 total amount paid for such claim.

1 (2) Such portion of the amounts recovered as is
2 determined to have been paid out of the trust funds
3 under sections 1817 and 1841 of the Social Security
4 Act shall be repaid to such trust funds.

5 (3) The remainder of the amounts recovered
6 shall be deposited as miscellaneous receipts of the
7 Treasury of the United States.

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